

USDC SCAN INDEX SHEET



DE LA CRUZ

SAN DIEGO CITY OF

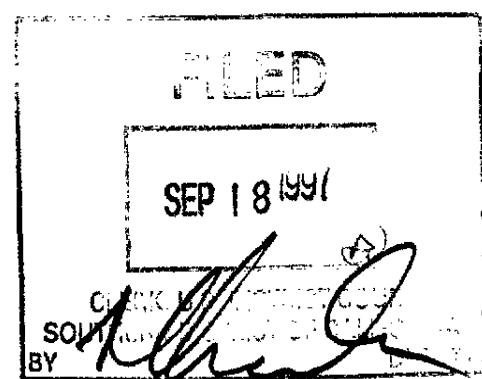
RYC 9/18/97 15:54

3:97-CV-00111

\*17\*

\*ANS.\*

1 CASEY G. GWINN, City Attorney  
2 ANITA M. NOONE, Assistant City Attorney  
3 FRANCIS M. DEVANEY, Deputy  
4 California State Bar No. 110409  
5 Office of The City Attorney  
6 Civil Division  
7 1200 Third Avenue, Suite 1200  
8 San Diego, CA 92101-4184  
9 Telephone: (619) 533-5800  
10 Facsimile: (619) 533-5847



11 Attorneys for Defendants CITY OF SAN DIEGO,  
12 MICHAEL BROGDON, ROBERT FINCH, ROBERT NICKLO,  
13 SHELLEY ZIMMERMAN and ELIJAH ZUNIGA

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

25 ESTEBAN AREVALO DE LA CRUZ; ) No. 97CV0111J (POR)  
26 SILVIA LORENA DE LEON; ) DEFENDANTS' ANSWER TO PLAINTIFFS'  
27 KARLA FABIOLA AREVALO DE ) FIRST AMENDED COMPLAINT FOR  
28 LEON, a minor; HEYDI VERONICA ) DAMAGES; DEMAND FOR JURY TRIAL  
1 AREVALO DE LEON, a minor; ) (F.R.C.P. 38)  
2 JOSSELINE LORENA AREVALO DE )  
3 LEON, a minor, by and through their )  
4 guardians, ESTEBAN AREVALO DE )  
5 LA CRUZ and SILVIA LORENA DE )  
6 LEON; BYRON AREVALO; )  
7 PROSPERO GUILLERMO DUBON )  
8 AREVALO; and JUAN FRANCISCO )  
9 GOMEZ VELASQUEZ; )  
10 Plaintiffs, )  
11 v. )  
12 CITY OF SAN DIEGO; MICHAEL )  
13 BROGDON; ROBERT FINCH; ROBERT )  
14 NICKLO; SHELLEY ZIMMERMAN; )  
15 ELIJAH ZUNIGA; and DOES 1-20, )  
16 inclusive; )  
17 Defendants. )  
18  
19  
20  
21  
22  
23  
24

25 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, defendants CITY OF SAN  
26 DIEGO, MICHAEL BROGDON, ROBERT FINCH, ROBERT NICKLO, SHELLEY  
27 ZIMMERMAN and ELIJAH ZUNIGA, hereby demand trial by jury for all issues so triable in this  
28 matter.

1 Defendants CITY OF SAN DIEGO, MICHAEL BROGDON, ROBERT FINCH, ROBERT  
2 NICKLO, SHELLEY ZIMMERMAN and ELIJAH ZUNIGA answer plaintiffs' Complaint for  
3 Damages on file herein by admitting, denying and alleging as follows:

4 **PARTIES**

5 1. In response to the allegations of paragraph 1, defendants have no information or belief  
6 sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny  
7 each and every allegation in said paragraph.

8 2. In response to the allegations of paragraph 2, defendants have no information or belief  
9 sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny  
10 each and every allegation in said paragraph.

11 3. In response to the allegations of paragraph 3, defendants have no information or belief  
12 sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny  
13 each and every allegation in said paragraph.

14 4. In response to the allegations of paragraph 4, defendants have no information or belief  
15 sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny  
16 each and every allegation in said paragraph.

17 5. In response to the allegations of paragraph 5, defendants have no information or belief  
18 sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny  
19 each and every allegation in said paragraph.

20 6. In response to the allegations of paragraph 6, defendants have no information or belief  
21 sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny  
22 each and every allegation in said paragraph.

23 7. In response to the allegations of paragraph 7, defendants have no information or belief  
24 sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny  
25 each and every allegation in said paragraph.

26 8. In response to the allegations of paragraph 8, defendants have no information or belief  
27 sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny  
28 each and every allegation in said paragraph.

9. In response to the allegations of paragraph 9, defendants admit the allegations therein.

10. In response to the allegations of paragraph 10, defendants admit the allegations

11. In response to the allegations of paragraph 11, defendants admit the allegations  
therein.

12. In response to the allegations of paragraph 12, defendants admit the allegations  
therein.

13. In response to the allegations of paragraph 13, defendants admit the allegations  
therein.

14. In response to the allegations of paragraph 14, defendants admit the allegations  
therin.

15. In response to the allegations of paragraph 15, defendants have no information or belief sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny each and every allegation in said paragraph.

16. In response to the allegations of paragraph 16, defendants have no information or belief sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny each and every allegation in said paragraph.

17. In response to the allegations of paragraph 17, defendants Michael Brogdon, Robert Finch, Robert Nicklo, Shelley Zimmerman and Elijah Zuniga, admit the allegations therein as to them, but have no information or belief sufficient to enable them to answer remaining allegations, and placing their denial on that ground, deny each and every allegation in said paragraph..

18. In response to the allegations of paragraph 18, defendants have no information or belief sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny each and every allegation in said paragraph.

## FACTUAL BACKGROUND

19. In response to the allegations of paragraph 19, defendants specifically deny each and every allegation in said paragraph.

20. In response to the allegations of paragraph 20, defendants specifically deny each and

1 every allegation in said paragraph.

2       21. In response to the allegations of paragraph 21, defendants have no information or  
3 belief sufficient to enable them to answer said allegations regarding plaintiffs' immigration status,  
4 and, placing their denial on that ground, deny each and every allegation in said paragraph regarding  
5 that status. As to the remaining allegations, defendants specifically deny each and every allegation  
6 in said paragraph.

7       22. In response to the allegations of paragraph 22, defendants specifically deny each and  
8 every allegation in said paragraph.

9       23. In response to the allegations of paragraph 23, defendants specifically deny each and  
10 every allegation in said paragraph.

11       24. In response to the allegations of paragraph 24, defendants have no information or  
12 belief sufficient to enable them to answer said allegations, and, placing their denial on that ground,  
13 deny each and every allegation in said paragraph.

14       25. In response to the allegations of paragraph 25, defendants specifically deny each and  
15 every allegation in said paragraph.

16       26. In response to the allegations of paragraph 26, defendants admit that they allowed  
17 someone to leave the apartment to pick up a child from school. As to the remaining allegations,  
18 defendants have no information or belief sufficient to enable them to answer said allegations, and,  
19 placing their denial on that ground, deny each and every remaining allegation in said paragraph.

20       27. In response to the allegations of paragraph 27, defendants deny each and every  
21 allegation in said paragraph.

22       28. In response to the allegations of paragraph 28 defendants have no information or  
23 belief sufficient to enable them to answer said allegations, and, placing their denial on that ground,  
24 deny each and every allegation in said paragraph.

25       29. In response to the allegations of paragraph 29, defendants specifically deny each and  
26 every allegation in said paragraph.

27       30. In response to the allegations of paragraph 30, defendants specifically deny each and  
28 every allegation in said paragraph.

1       31.    In response to the allegations of paragraph 31, defendants specifically deny each and  
2 every allegation in said paragraph.

3       32. In response to the allegations of paragraph 32, defendants specifically deny each and  
4 every allegation in said paragraph.

5       33.    In response to the allegations of paragraph 33, defendants specifically deny each and  
6 every allegation in said paragraph.

7       34.     In response to the allegations of paragraph 34, defendants have no information or  
8 belief sufficient to enable them to answer said allegations, and, placing their denial on that ground,  
9 deny each and every allegation in said paragraph.

10       35.    In response to the allegations of paragraph 35, defendants have no information or  
11 belief sufficient to enable them to answer said allegations, and, placing their denial on that ground,  
12 deny each and every allegation in said paragraph.

13       36.    In response to the allegations of paragraph 36, defendants have no information or  
14 belief sufficient to enable them to answer said allegations, and, placing their denial on that ground,  
15 deny each and every allegation in said paragraph.

16       37.     In response to the allegations of paragraph 37, defendants have no information or  
17 belief sufficient to enable them to answer said allegations, and, placing their denial on that ground,  
18 deny each and every allegation in said paragraph.

## **FACTUAL ALLEGATIONS**

**COUNT ONE**

21 38. Defendants incorporate herein by reference their responses to paragraphs one through  
22 thirty-seven, *supra*.

23       39.     In response to the allegations of paragraph 39, defendants specifically deny each and  
24 every allegation in said paragraph.

25        40.      In response to the allegations of paragraph 40, defendants specifically deny each and  
26 every allegation in said paragraph.

27        41.      In response to the allegations of paragraph 41, defendants specifically deny each and  
28 every allegation in said paragraph.

1       42.     In response to the allegations of paragraph 42, defendants specifically deny each and  
2 every allegation in said paragraph.

**COUNT TWO**

4 43. Defendants incorporate herein by reference their responses to paragraphs one through  
5 forty-two, *supra*.

6 44. In response to the allegations of paragraph 44, defendants specifically deny each and  
7 every allegation in said paragraph.

8        45.      In response to the allegations of paragraph 45, defendants specifically deny each and  
9 every allegation in said paragraph.

10       46.    In response to the allegations of paragraph 46, defendants specifically deny each and  
11 every allegation in said paragraph.

12        47. In response to the allegations of paragraph 47, defendants admit the allegations as to  
13 the named defendant police officers; defendants have no information or belief as to Does 1 through 5  
14 sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny  
15 each and every allegation in said paragraph.

16        48.     In response to the allegations of paragraph 48, defendants specifically deny each and  
17 every allegation in said paragraph.

18 49. In response to the allegations of paragraph 49, defendants specifically deny each and  
19 every allegation in said paragraph.

20        50.      In response to the allegations of paragraph 50, defendants specifically deny each and  
21 every allegation in said paragraph.

22        51.    In response to the allegations of paragraph 51, defendants specifically deny each and  
23 every allegation in said paragraph.

24        52.     In response to the allegations of paragraph 52, defendants specifically deny each and  
25 every allegation in said paragraph.

### COUNT THREE

27       53. Defendants incorporate herein by reference their responses to paragraphs one through  
28 fifty-two, *supra*.

1 54. In response to the allegations of paragraph 54, defendants specifically deny each and  
2 every allegation in said paragraph.

3 55. In response to the allegations of paragraph 55, defendants specifically deny each and  
4 every allegation in said paragraph.

5        56.    In response to the allegations of paragraph 56, defendants specifically deny each and  
6 every allegation in said paragraph.

## COUNT FOUR

8 57. Defendants incorporate herein by reference their responses to paragraphs one through  
9 fifty-six, *supra*.

10        58.     In response to the allegations of paragraph 58, defendants specifically deny each and  
11 every allegation in said paragraph.

12        59.      In response to the allegations of paragraph 59, defendants specifically deny each and  
13 every allegation in said paragraph.

14 60. In response to the allegations of paragraph 60, defendants specifically deny each and  
15 every allegation in said paragraph.

16        61.      In response to the allegations of paragraph 61, defendants admit the allegations as to  
17 the named defendant police officers; defendants have no information or belief as to Does 1 through 5  
18 sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny  
19 each and every allegation in said paragraph.

20        62.    In response to the allegations of paragraph 62, defendants specifically deny each and  
21 every allegation in said paragraph.

22 63. In response to the allegations of paragraph 63, defendants specifically deny each and  
23 every allegation in said paragraph.

24 64. In response to the allegations of paragraph 64, defendants specifically deny each and  
25 every allegation in said paragraph.

## COUNT FIVE

27       65. Defendants incorporate herein by reference their responses to paragraphs one through  
28 sixty-four, *supra*.

66. In response to the allegations of paragraph 66, defendants specifically deny each and every allegation in said paragraph.

67. In response to the allegations of paragraph 67, defendants specifically deny each and every allegation in said paragraph.

68. In response to the allegations of paragraph 68, defendants specifically deny each and every allegation in said paragraph.

69. In response to the allegations of paragraph 69, defendants specifically deny each and every allegation in said paragraph.

70. In response to the allegations of paragraph 70, defendants specifically deny each and every allegation in said paragraph.

71. In response to the allegations of paragraph 71, defendants admit the allegations therein.

**COUNT SIX**

72. Defendants incorporate herein by reference their responses to paragraphs one through seventy-two, *supra*.

73. In response to the allegations of paragraph 73, defendants specifically deny each and every allegation in said paragraph.

74. In response to the allegations of paragraph 74, defendants have no information or belief sufficient to enable them to answer said allegations, and, placing their denial on that ground, deny each and every allegation in said paragraph.

75. In response to the allegations of paragraph 75, defendants specifically deny each and every allegation in said paragraph.

76. In response to the allegations of paragraph 76, defendants specifically deny each and every allegation in said paragraph.

## COUNT SEVEN

77. Defendants incorporate herein by reference their responses to paragraphs one through seventy-seven, *supra*.

78. In response to the allegations of paragraph 78, defendants are unable to ascertain the

1 meaning of the first sentence in the paragraph and are, therefore, unable to answer said allegations.

2 As to the allegations in the second sentence, defendants admit the allegations therein.

3 79. In response to the allegations of paragraph 79, defendants specifically deny each and  
4 every allegation in said paragraph.

5 80. In response to the allegations of paragraph 80, defendants specifically deny each and  
6 every allegation in said paragraph.

7 **COUNT EIGHT**

8 81. Defendants incorporate herein by reference their responses to paragraphs one through  
9 eighty, *supra*.

10 82. In response to the allegations of paragraph 82, defendants specifically deny each and  
11 every allegation in said paragraph.

12 83. In response to the allegations of paragraph 83, defendants specifically deny each and  
13 every allegation in said paragraph.

14 84. In response to the allegations of paragraph 84, defendants specifically deny each and  
15 every allegation in said paragraph.

16 **COUNT NINE**

17 85. Defendants incorporate herein by reference their responses to paragraphs one through  
18 eighty-four, *supra*.

19 86. In response to the allegations of paragraph 86, defendants specifically deny each and  
20 every allegation in said paragraph.

21 87. In response to the allegations of paragraph 87, defendants specifically deny each and  
22 every allegation in said paragraph.

23 88. In response to the allegations of paragraph 88, defendants specifically deny each and  
24 every allegation in said paragraph.

25 **COUNT TEN**

26 89. Defendants incorporate herein by reference their responses to paragraphs one through  
27 eighty-eight, *supra*.

28 90. In response to the allegations of paragraph 90, defendants have no information or

1 belief sufficient to enable them to answer the first two sentences of said allegations, and, placing  
2 their denial on that ground, deny each and every allegation in said sentences. As to the allegations in  
3 the third sentence, defendants admit the allegations therein.

4 91. In response to the allegations of paragraph 91, defendants specifically deny each and  
5 every allegation in said paragraph.

6 92. In response to the allegations of paragraph 92, defendants specifically deny each and  
7 every allegation in said paragraph.

8 **COUNT ELEVEN**

9 93. Defendants incorporate herein by reference their responses to paragraphs one through  
10 ninety-two, *supra*.

11 94. In response to the allegations of the first sentence of paragraph 94, defendants deny  
12 each and every allegation therein. As to the allegations of the second sentence in the paragraph,  
13 defendants admit the allegations therein.

14 95. In response to the allegations of paragraph 95, defendants specifically deny each and  
15 every allegation in said paragraph.

16 96. In response to the allegations of paragraph 96, defendants specifically deny each and  
17 every allegation in said paragraph.

18 **COUNT TWELVE**

19 97. Defendants incorporate herein by reference their responses to paragraphs one through  
20 ninety-six, *supra*.

21 98. In response to the allegations of paragraph 98, defendants admit the allegations  
22 therein.

23 99. In response to the allegations of paragraph 99, defendants have no information or  
24 belief sufficient to enable them to answer said allegations, and, placing their denial on that ground,  
25 deny each and every allegation in said paragraph.

26 100. In response to the allegations of paragraph 100, defendants have no information or  
27 belief sufficient to enable them to answer said allegations, and, placing their denial on that ground,  
28 deny each and every allegation in said paragraph.

1       101. In response to the allegations of paragraph 101, defendants specifically deny each and  
2 every allegation in said paragraph.

3 102. In response to the allegations of paragraph 102, defendants have no information or  
4 belief sufficient to enable them to answer said allegations, and, placing their denial on that ground,  
5 deny each and every allegation in said paragraph.

6 103. In response to the allegations of paragraph 103, defendants specifically deny each and  
7 every allegation in said paragraph.

8 104. In response to the allegations of paragraph 104 defendants specifically deny each and  
9 every allegation in said paragraph.

## AFFIRMATIVE DEFENSES

1

Plaintiffs assumed whatever risk or hazard, if any existed, that resulted in the alleged injuries.

11

14 Plaintiffs themselves were careless and negligent in and about the matters alleged in their  
15 complaint and said carelessness and negligence on plaintiff's own part proximately contributed to  
16 whatever injuries, losses and damages they purportedly suffered, if any there were, the liability for  
17 which must be apportioned, reduced or barred in accordance with the law of comparative negligence.

III

Any and all acts of defendants were reasonable under the circumstances.

IV

Defendants had reasonable and probable cause to act in the manner they did.

V

Any and all acts or omissions of defendants were privileged.

VI

Defendants acted in good faith and with a reasonable belief that their conduct was lawful and necessary.

VII

Defendants acted in self-defense of person and property and used no more force than was

1 reasonably necessary for such defense.

VIII

3 The acts of defendants were done in the course of a lawful detention and any force used was  
4 reasonable and necessary to effect such detention and/or overcome plaintiffs' resistance.

IX

6 Defendants are immune from liability to plaintiffs pursuant to the provisions of Sections  
7 815.2(b) and 820.2 of the California Government Code.

x

9 Defendants are immune from liability to plaintiffs pursuant to the provisions of Sections  
10 815.2(b) and 820.4 of the California Government Code.

XII

12 Defendants are immune from liability to plaintiffs pursuant to the provisions of Sections  
13 815.2(b) and 820.8 of the California Government Code.

XII

15 Defendants are immune from liability to plaintiffs pursuant to the provisions of Sections  
16 815.2(b) of the California Government Code and Section 43.55 of the California Civil Code.

XIII

18 The facts alleged in the complaint, and each cause of action therein, fail to state a cause of  
19 action against these answering defendants.

WHEREFORE, defendants pray judgment as follows:

1. Plaintiffs take nothing by their complaint;
2. Defendants recover their costs of suit incurred herein; and
3. The court award such other relief as it deems proper.

24 Dated: September 16, 1997

CASEY G. GWYNN, City Attorney

By:

Francis M. Devaney, Deputy

Attorneys for Defendants CITY OF SAN DIEGO,  
MICHAEL BROGDON, ROBERT FINCH,  
ROBERT NICKLO, SHELLEY ZIMMERMAN and  
ELIJAH ZUNIGA

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ESTEBAN AREVALO DE LA CRUZ;	)	No. 97CV0111J (POR)
SILVIA LORENA DE LEON;	)	
KARLA FABIOLA AREVALO DE	)	<b>DECLARATION OF SERVICE</b>
LEON, a minor; HEYDI VERONICA	)	
AREVALO DE LEON, a minor;	)	
JOSSELINE LORENA AREVALO DE	)	
LEON, a minor, by and through their	)	
guardians, ESTEBAN AREVALO DE	)	
LA CRUZ and SILVIA LORENA DE	)	
LEON; BYRON AREVALO;	)	
PROSPERO GUILLERMO DUBON	)	
AREVALO; and JUAN FRANCISCO	)	
GOMEZ VELASQUEZ;	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF SAN DIEGO; JERRY	)	
SANDERS; MICHAEL BROGDON;	)	
and DOES 1-20, inclusive;	)	
	)	
Defendants.	)	
	)	

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; and that I served the individuals on the service list attached hereto the following documents:

**DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST  
AMENDED COMPLAINT FOR DAMAGES; DEMAND FOR  
JURY TRIAL (F.R.C.P. 38)**

in the following manner: (Check one)

- 1)  By personally delivering copies to the person served.
- 2)  By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing copies (first class mail, postage prepaid) to the person served at the place where the copies were left.

De La Cruz, et al. v. City of San Diego, et al.  
United States District Court Case No. 97CV0111J (POR)

3)  By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of his office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing copies (first class mail, postage prepaid) to the person served at the place where the copies were left.

4)  By placing a copy in a separate envelope, with postage fully prepaid, for each address named below, and depositing each in the U.S. Mail at San Diego, California, on the 17<sup>th</sup> day of Sept., 1997.

Executed this 17<sup>th</sup> day of Sept., 1997, at San Diego, California.

Katherine Knight  
Katherine Knight

**SERVICE LIST:**

David E. Kleinfeld  
Daniel S. Silverman  
Barry J. Tucker  
PILLSBURY, MADISON & SUTRO, LLP  
110 W. Broadway, Ste. 1800  
San Diego, CA 92101  
(619) 234-5000  
**Attorneys for Plaintiffs**